

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6345 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

HABIBBHAI N KHALIFA

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR IS SUPEHIA for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the petitioner. Learned advocate Mr. Supehia is appearing for the respondent workman.

The facts of the present case, in short, are that the respondent was working as driver with the petitioner corporation and while he was on duty on 31.5.1979, his bus had met with an accident near Dhobi Kui and as such,

there was damage to his bus and, therefore, he was served with a chargesheet and departmental inquiry was initiated against him and, thereafter, he was dismissed from service on 3.10.1981. In the first departmental appeal, the said order of dismissal was set aside and he was placed in the original pay scale for the post of driver but was not paid any wages for the intervening period. Therefore, the respondent workman had challenged the order of punishment passed by the first appellate authority to place him on the original pay scale of driver category and also claimed wages for the intervening period before the Industrial Tribunal, Ahmedabad in Reference (IT) No. 129 of 1987. Said reference was decided by the tribunal on 30.1.1989 and has set aside the order passed by the first appellate authority dated 3.10.1981 and directed the petitioner corporation to pay wages as if no punishment has been awarded to the workman and the wages and the difference thereof were directed to be paid within two months thereof. Said award passed by the Tribunal has been challenged by the petitioner corporation before this court by filing this petition.

This Court, while admitting the present petition, has not granted any stay against the implementation of the impugned judgment and award of the tribunal.

The Tribunal has considered the evidence on record and has examined as to whether the concerned workman was driving the vehicle involved in the accident rashly and negligently or not and whether there was any damage to the vehicle in question on that count. In the departmental inquiry, one Mr. Parmar was examined who was working in Dehgam on that day and having come to know about the incident, he went to the place of incident. However, he has not witnessed the incident in question. He has no knowledge as to how the accident took place. It is an admitted position that one camel cart was proceeding towards Dahegam and it is alleged that the concerned driver was overtaking the said camel cart. It appears that the driver was required to take his bus on the right hand side and when he has taken the bus on right hand side, there was one cyclist coming from the front side and as such, the bus was required to be taken on the side and as such, the bus went on the side of the road and had dashed with the tree. Branch of the said tree was entangled in the roof of the bus and thereby, there was damage to the bus and said damage was to the extent of Rs.6000/-. In criminal case arising from the said accident, the driver was acquitted for the offence under section 279 of the Indian Penal Code. Said

judgment of acquittal was produced before the tribunal by the respondent workman. Admittedly, in the departmental inquiry, no eye witness was examined by the corporation. Even the conductor of the bus was also not examined who was examined in the criminal trial. Therefore, the tribunal took the view that when the criminal court has acquitted the workman on the same set of facts, no inquiry in that regard should have been initiated against the workman. The concerned workman was acquitted on 15.12.1979 and the chargesheet was issued on 21.9.1979 as per Exh. 13 and the departmental inquiry was over in the year 1981. While passing the impugned award, the tribunal has relied on the decision of this court rendered in special civil application no. 3310 of 1988 with special civil application no. 3313 of 1988 wherein it has been held that when there is only evidence of the reporter having no personal knowledge, then, it has to be considered as 'no evidence' and, therefore, it is not enough to prove the alleged negligence on the part of the driver. The tribunal has further relied upon the decision reported in 1985 Lab IC 1095. After considering the reasoning given by the tribunal in its impugned judgment and order and also considering the decision of this Court reported in 1985 Lab. IC 1095 and the recent decision of the apex court reported in 1999 Lab IC page 1565, according to my opinion, the findings given by the tribunal are just, legal and valid and the conclusion drawn by the tribunal does not require any interference of this Court while exercising the powers under Article 226/227 of the Constitution of India. The tribunal has not committed any error in passing the impugned judgment and award. Learned advocate for the petitioner corporation has not been able to point out any infirmity in the impugned judgment and award and, therefore, the impugned judgment and award passed by the tribunal does not call for any interference of this court in this petition under Article 226/227 of the Constitution of India.

Therefore, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

This Court, while admitting this petition, has not granted any interim relief against the operation of the impugned award and, therefore, by now, the corporation must have complied with the judgment and award of the tribunal. However, in view of passage of about ten years, it would be just and proper to direct the petitioner corporation to comply with the judgment and award of the tribunal, if it has not complied with the same so far. Accordingly, in the larger interest of

justice, the petitioner corporation is directed to comply with the judgment and award of the tribunal as expeditiously as possible preferably within three months from the date of receipt of certified copy of this order, if it has not complied with the same so far.

8.10.1999. (H.K.Rathod,J.)

Vyas